

NORTHAMPTON COUNTY
ORPHANS' COURT RULES

RULE N1.6.1. MEDIATION.

All interested parties in a matter may use mediation to resolve issues pending before the Court, and, upon either partial or complete resolution, may petition the Court to approve the agreement of all interested parties as an Order or Decree of the Court.

(a) all interested parties may engage the services of a mediator, either prior to or after any party in interest has filed a Pleading before the Court, including an Account filed by a fiduciary for audit.

(b) All interested parties in a matter docketed before the Court may request to engage in mediation at any time during the pendency of the matter.

(c) In such request for mediation, all interested parties shall identify:

(1) The proposed mediator and the proposed source of payment of fees and costs of the mediator;

(2) Names and contact information of all interested parties and any counsel who shall participate in the mediation;

(3) Names and information regarding any interested parties having diminished capacity or legal disability, whose interest must be adequately protected; and

(4) The scheduled date for the initial mediation conference.

(d) All interested parties shall execute an agreement for confidential mediation, which is not inconsistent with this local rule, and which shall remain confidential.

(e) Mediation shall not delay the required filing of any Pleading or ordered return dates, or the scheduling of Court Hearings, unless specifically requested by joinder of the interested parties and so ordered by the Court.

(f) The Court will respect the confidentiality of the mediation process and of the mediator's obligation of confidentiality.

(g) Upon completion of mediation, all interested parties shall sign a memorandum of principal terms, which either shall acknowledge that no resolution was reached, or shall embody the resolutions attained. This memorandum of principal terms shall clearly state partial resolutions or complete resolution attained. The memorandum of principal terms shall include a list of unresolved issues to be determined by the Court. Where appropriate, the principal terms could provide for future review in light of changed circumstances or change in the operative facts. The memorandum of principal terms agreed upon, or the statement of no resolution, shall be filed with the Court.

(h) In no event shall the terms agreed upon depart from or violate any provisions of applicable law, specifically including the Older Adults Protective Services Act, the Act of Dec. 18, 1996, P.L.1125, No.169(35P.S. §§ 10225.101 - 10225.5102) as may be amended.

(i) The interested parties may request that the Court approve the final mediated agreement, which embodies the principal terms agreed upon in the memorandum referenced above. The Court may grant approval in an Order or Decree. Alternatively, the Court may recommend any changes that the Court deems appropriate for approval. The parties to the mediation may accept the Court's recommendations, in which event the terms agreed upon, as modified, shall be approved, or the parties may decline to accept the Court's recommendations, in which event the matter is deemed not to have resulted in an agreement.

RULE N2.5.1. TIME FOR CALLING OF ACCOUNTS FOR AUDIT.

Accounts will be called for audit in open Court on such dates as shall be determined by the Court.

RULE N2.6.1. TIME FOR FILING OF ACCOUNTS FOR AUDIT.

Accounts which are to be called for audit on a particular audit date shall be filed not later than the closing date fixed for an audit date by the Court calendar.

RULE N5.10.1. PUBLIC SALE OF REAL PROPERTY, ADDITIONAL REQUIREMENTS

(a) Sale by Personal Representative. A petition by a fiduciary to sell real property at public sale, in addition to the requirements of Pa. O.C. Rule 5.10 shall also set forth in separate paragraphs:

(1) the name, residence and date of death of the decedent; whether they died testate or intestate; and the date of the grant of letters;

(2) that the personal representative is not otherwise authorized to sell by the Act, or is not authorized or is denied the power to do so by the Will, or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;

(3) whether an inventory and appraisalment have been filed; the total value of the property shown therein;, and the value at which the real property to be sold was included therein;

(4) if the personal representative entered bond with the Register, the name of the surety and the amount of such bond;

(5) the names and relationships of all interested parties; a brief description of their respective interests; whether any of them are minors, incapacitated persons, or deceased and if so, the names and the record of the appointment of their fiduciaries, if any;

(6) a full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and the current valuation for local real estate tax purposes; and

(7) sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(b) Sale by Trustee. A petition by a trustee to sell real property at public sale shall, in addition to the requirements of Pa. O.C. Rule 5.10, also set forth in separate paragraphs:

(1) how title was acquired, stating the date and place of probate of the Will or recording of the deed;

(2) a recital of the relevant provisions of the Will or deed pertaining to the real property to be sold, and the relevant history of the trust;

(3) the names and relationships of all interested parties, a brief description of their respective interest, whether any of them are minors, incapacitated persons or deceased, and if so, the names and record of the appointment of their fiduciaries, if any;

(4) a full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and the current valuation for local real estate tax purposes;

(5) that the trustee is not otherwise authorized to sell by the Act, or is denied the power by the trust instrument; or that it is advisable that the sale have the effect of a judicial sale, stating the reasons; and

(6) sufficient facts to enable the Court to determine that the proposed sale is for the best interest of the trust.

(c) Sale by Guardian of Minor. A petition by the guardian of a minor to sell real property at public sale shall, in addition to the requirements of Pa. O.C. Rule 5.10, also

(1) the age of the minor;

(2) the names of the minor's next of kin and the notice given them of the presentation of the petition;

(3) how title was acquired, stating the date and place of probate of the Will or recording of the deed;

(4) a recital of the provisions of the Will or deed relating to the real property to be sold;

(5) the nature and extent of the interest of the minor, of the guardian, and of other persons in the real property;

(6) a full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current valuation for local real estate tax purposes; and

(7) sufficient facts to enable the Court to determine that the proposed sale will be for the best interest of the minor.

(d) Sale by Guardian of an Incapacitated Person. A petition by the guardian of an incapacitated person to sell real property at public sale shall, in addition to the requirements of Pa. O.C. Rule 5.10, also set forth in separate paragraphs;

(1) the date of adjudication of incompetency and of the appointment of the guardian;

(2) the place of domicile and the current place of residence of the incapacitated person;

(3) the date of filing of the inventory of the assets of the incapacitated person with a summary thereof;

(4) the vocation of the incapacitated person and his current earned income, if any;

(5) details concerning the persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate if the incapacitated person were to die at that time;

(6) a schedule of the names and addresses of the creditors of the incapacitated person and the amounts of their claims;

(7) description of the property and recital of record title, the improvements thereon, by whom it is occupied, its rental value and current valuation for local real estate tax purposes;

(8) such facts as will enable the Court to determine that the proposed sale is for the benefit of the incapacitated person; and

(9) joinder of or proof of notice to all interested parties.

RULE N5.10.2. NOTICE. CONFIRMATION.

(a) Notice. After the allowance of a petition for public sale, notice of the public sale of real property shall be given concurrently as follows:

(1) by advertisement once a week for three (3) successive weeks in one or more newspapers of general circulation published at or near the situs of the real property; and

(2) by personal notice or registered or certified mail to all interested parties, of the time and place of the proposed sale, at least twenty (20) days prior thereto.

(b) Confirmation. If no objection is filed, the Court may enter a Decree approving or confirming the sale upon submission of a return of sale; which shall be in the form of an affidavit, which shall set forth:

(1) the notice given as provided by (1) above;

(2) the price obtained; and

(3) the name and address of the purchaser and an averment that they were the highest bidder.

RULE N5.11.1. PRIVATE SALE OF REAL PROPERTY, EXHIBITS.

The following exhibits shall be attached to a petition by a personal representative, trustee, or guardian to sell real estate at private sale;

(1) a copy of the Will, deed, or Decree by which the fiduciary was appointed;

(2) any consents or joinders of all interested parties, and the names and a copy of the notice which has been given to those parties who do not consent or join, such notice containing the date of the presentation of the petition to the Court;

(3) consent by any mortgagee whose lien would otherwise not be discharged by the sale or, if not attached, the reason therefor;

(4) a copy of the agreement of sale; and

(5) affidavits as to value by two real estate appraisers.

RULE N5.11.2. SECURITY.

The Court, in the Decree approving or confirming the private sale, will fix the amount of bond or additional security which the personal representative, trustee or guardian shall be required to enter, or will excuse the fiduciary from entering bond or additional security.

RULE N7.1.1. DISCOVERY

(a) The practice relating to discovery shall be by special Order of the Court in each case.

(b) Leave of Court must be granted to obtain discovery of any kind or the perpetuation of testimony. Requests may be made by petition or oral motion, with proper notice or consent of all parties.

(c) A petition to perpetuate testimony shall include the averments required by Pa.R.C.P 1532.

RULE N7.1.2. PRE-HEARING CONFERENCE

(a) In any proceeding before the Court, the Court may direct the parties and counsel to appear for a pre-hearing conference.

(b) At least five (5) business days prior to the date of the pre-hearing conference, each party shall file with the Clerk and serve upon each other party a written pre-hearing statement which shall contain:

(1) a listing of the legal and factual issues and relief requested;

(2) the names and addresses of all witnesses to be called during the hearing and a statement as to whether each witness is a fact witness or an expert witness;

(3) an identification of all exhibits to be used at any hearing;

(4) any list of proposed stipulations or agreements;

(5) any proposed amendments to Pleadings;

(6) such other matters as may aid the Court in the disposition of this action;

(7) an identification of hearing counsel, along with counsel's name, address, email address, telephone number and facsimile number;

(8) an estimate of the length of the hearing; and

(9) a statement as to the status of settlement negotiations.

RULE N9.1.1. MANNER OF NOTICE AND TO WHOM GIVEN OF APPOINTMENT OF MASTER OR AUDITOR

(a) The Order of Appointment shall specify the matters which are referred to the Master or Auditor.

(b) An Auditor or Master shall give at least twenty (20) days written notice of their appointment and of the time and place of the first hearing to all parties of record or their attorneys of record by ordinary mail to each person's address of record.

(c) The Court may direct the notice of appointment and of the time and place of the first hearing be given to other persons in such manner as the Court may direct.

RULE N9.6.1. NOTICE OF INTENTION TO FILE

An Auditor or Master shall give twenty (20) days' notice to all parties of record or their attorneys of record of the Auditor's or Master's intention to file the report on a date certain. The Auditor or Master shall include a copy of the report with the notice.

RULE N9.7.1. MANNER OF CONFIRMATION AND APPROVAL OF REPORTS

(a) Objections to or a request for reconsideration of the report must be filed with the Master or Auditor within twenty (20) days of the date of the Notice of Intention to File in Pa. O.C. Rule N9.6.1. A copy of the objections must be served on all parties of record or their attorneys of record.

(b) Objections must be in writing. Each objection must be listed separately and precisely identify the basis of objection.

(c) If objections are filed with the Master or Auditor during the fifteen (15) day notice period, it shall then be the duty of the Master or Auditor to re-examine their report in light of the objections filed. Within thirty (30) days of the filing of the objections, the Master or Auditor will supplement their report by a full consideration of the objections seriatim setting forth concisely in their supplemental report the reasons for sustaining or dismissing each objection.

(d) The person filing objections to the report shall file a Praecipe for argument in accordance with Northampton County Court Rule of Civil Procedure No. N211.

(e) If no objections are filed to the report, the report shall be filed with the Court and forwarded to the Judge appointing the Master or Auditor for examination and the entry of an appropriate Decree.